

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

No. 2740

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Introduced by Assembly Members ~~Lackey and Low~~ *Low and Lackey*

February 19, 2016

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An act to amend ~~Section 236.1 of the Penal Code, relating to human trafficking. Sections 23152 and 23153 of the Vehicle Code, relating to vehicles.~~

### LEGISLATIVE COUNSEL'S DIGEST

AB 2740, as amended, ~~Lackey Low. Human trafficking. Driving under the influence: Tetrahydrocannabinol standard.~~

*Existing law prohibits a person who has 0.08% or more, by weight, of alcohol in his or her blood from driving a vehicle. Existing law also prohibits a person, while having 0.08% or more, by weight, of alcohol in his or her blood, from driving a vehicle and concurrently doing any act forbidden by law, or neglecting any duty imposed by law in driving the vehicle, when the act or neglect proximately causes bodily injury to a person other than the driver. Existing law establishes a rebuttable presumption for each of those offenses that the person had 0.08% or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08% or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within 3 hours after the driving.*

*This bill would make it an offense for a person who has 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood to drive a vehicle. The bill would also make it an offense for a person, while having 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood, to drive a vehicle and concurrently do any act forbidden by law, or*

*neglect any duty imposed by law in driving the vehicle, when the act or neglect proximately causes bodily injury to a person other than the driver. The bill would establish a rebuttable presumption for each of those offenses that the person had 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood at the time of driving the vehicle if the person had 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood at the time of the performance of a chemical test within 2 hours of the driving. The bill would also require corroborating evidence, as specified, in addition to a level of 5 ng/ml or more of delta 9-tetrahydrocannabinol in the driver's blood, for a conviction for either of those offenses. The bill would make additional technical, nonsubstantive changes.*

*By changing the definitions of existing crimes, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law, as amended by Proposition 35, an initiative measure approved by the voters at the November 6, 2012, statewide general election, makes it a crime to deprive or violate another person's personal liberty with the intent to obtain forced labor or services. Existing law also makes it a crime to deprive or violate another person's personal liberty for the purpose of prostitution or sexual exploitation. Proposition 35 provides that it may be amended by a statute in furtherance of its objectives by a majority of the membership of each house of the Legislature concurring.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 23152 of the Vehicle Code is amended to*
- 2     *read:*
- 3     23152. (a) It is unlawful for a person who is under the
- 4     influence of any alcoholic beverage to drive a vehicle.

(b) (1) It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

~~For~~

(2) For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

~~In~~

(3) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for a person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section ~~11875~~ 11876) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code.

(d) (1) It is unlawful for a person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210.

~~In~~

(2) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(e) It is unlawful for a person who is under the influence of any drug to drive a vehicle.

(f) (1) It is unlawful for a person who has 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood to drive a vehicle.

(2) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood at the time of driving the vehicle if the person had 5 ng/ml or more of delta 9-tetrahydrocannabinol in his or her blood at the time of the performance of a chemical test within two hours after the driving.

(3) A person may not be convicted of the offense described in this subdivision based solely on the blood test described in paragraph (2). Corroborating evidence independent of the blood test that the person's physical or mental ability to drive a vehicle has been impaired is required for conviction, and may include, but is not limited to, mental or physical signs of impairment, poor performance on one or more field sobriety tests, unsafe or inattentive driving, incriminating statements by the person, or testimony of other witnesses about the person's driving or sobriety.

(f)

(g) It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle.

~~(g) This section shall become operative on January 1, 2014.~~

SEC. 2. Section 23153 of the Vehicle Code is amended to read:

23153. (a) It is unlawful for a person, while under the influence of any alcoholic ~~beverage~~ *beverage*, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, ~~which~~ *when the* act or neglect proximately causes bodily injury to ~~any~~ a person other than the driver.

(b) (1) It is unlawful for a person, while having 0.08 percent or more, by weight, of alcohol in his or her ~~blood~~ *blood*, to drive a vehicle and concurrently do any act forbidden by law, or neglect any duty imposed by law in driving the vehicle, ~~which~~ *when the* act or neglect proximately causes bodily injury to ~~any~~ a person other than the driver.

~~In~~

(2) In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after driving.

(c) In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of this code was violated.

(d) (1) It is unlawful for a person, while having 0.04 percent or more, by weight, of alcohol in his or her ~~blood~~ *blood*, to drive a commercial motor vehicle, as defined in Section 15210, and concurrently to do any act forbidden by ~~law~~ *law*, or neglect any

1 duty imposed by law in driving the vehicle, ~~which~~ *when the act or*  
2 neglect proximately causes bodily injury to ~~any~~ *a* person other  
3 than the driver.

4 ~~In~~

5 (2) *In any prosecution under this subdivision, it is a rebuttable*  
6 *presumption that the person had 0.04 percent or more, by weight,*  
7 *of alcohol in his or her blood at the time of driving the vehicle if*  
8 *the person had 0.04 percent or more, by weight, of alcohol in his*  
9 *or her blood at the time of performance of a chemical test within*  
10 *three hours after driving.*

11 (e) It is unlawful for a person, while under the influence of any  
12 drug, to drive a vehicle and concurrently do any act forbidden by  
13 law, or neglect any duty imposed by law in driving the vehicle,  
14 ~~which~~ *when the act or neglect proximately causes bodily injury to*  
15 *any a* person other than the driver.

16 (f) (1) *It is unlawful for a person, while having 5 ng/ml or more*  
17 *of delta 9-tetrahydrocannabinol in his or her blood, to drive a*  
18 *vehicle and concurrently do any act forbidden by law, or neglect*  
19 *any duty imposed by law in driving the vehicle, when the act or*  
20 *neglect proximately causes bodily injury to a person other than*  
21 *the driver.*

22 (2) *In any prosecution under this subdivision, it is a rebuttable*  
23 *presumption that the person had 5 ng/ml or more of delta*  
24 *9-tetrahydrocannabinol in his or her blood at the time of driving*  
25 *the vehicle if the person had 5 ng/ml or more of delta*  
26 *9-tetrahydrocannabinol in his or her blood at the time of the*  
27 *performance of a chemical test within two hours after the driving.*

28 (3) *A person may not be convicted of the offense described in*  
29 *this subdivision based solely on the blood test described in*  
30 *paragraph (2). Corroborating evidence independent of the blood*  
31 *test that the person's physical or mental ability to drive a vehicle*  
32 *has been impaired is required for conviction, and may include,*  
33 *but is not limited to, mental or physical signs of impairment, poor*  
34 *performance on one or more field sobriety tests, unsafe or*  
35 *inattentive driving, incriminating statements by the person, or*  
36 *testimony of other witnesses about the person's driving or sobriety.*

37 (f)

38 (g) It is unlawful for a person, while under the combined  
39 influence of any alcoholic beverage and drug, to drive a vehicle  
40 and concurrently do any act forbidden by law, or neglect any duty

1 imposed by law in driving the vehicle, ~~which when the act or~~  
2 neglect proximately causes bodily injury to ~~any~~ a person other  
3 than the driver.

4 ~~(g) This section shall become operative on January 1, 2014.~~

5 *SEC. 3. No reimbursement is required by this act pursuant to*  
6 *Section 6 of Article XIII B of the California Constitution because*  
7 *the only costs that may be incurred by a local agency or school*  
8 *district will be incurred because this act creates a new crime or*  
9 *infraction, eliminates a crime or infraction, or changes the penalty*  
10 *for a crime or infraction, within the meaning of Section 17556 of*  
11 *the Government Code, or changes the definition of a crime within*  
12 *the meaning of Section 6 of Article XIII B of the California*  
13 *Constitution.*

14 ~~SECTION 1. Section 236.1 of the Penal Code is amended to~~  
15 ~~read:~~

16 ~~236.1. (a) A person who deprives or violates the personal~~  
17 ~~liberty of another with the intent to obtain forced labor or services,~~  
18 ~~is guilty of human trafficking and shall be punished by~~  
19 ~~imprisonment in the state prison for 5, 8, or 12 years and a fine of~~  
20 ~~not more than five hundred thousand dollars (\$500,000).~~

21 ~~(b) A person who deprives or violates the personal liberty of~~  
22 ~~another with the intent to effect or maintain a violation of Section~~  
23 ~~266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5,~~  
24 ~~311.6, or 518 is guilty of human trafficking and shall be punished~~  
25 ~~by imprisonment in the state prison for 8, 14, or 20 years and a~~  
26 ~~fine of not more than five hundred thousand dollars (\$500,000).~~

27 ~~(c) A person who causes, induces, or persuades, or attempts to~~  
28 ~~cause, induce, or persuade, a person who is a minor at the time of~~  
29 ~~commission of the offense to engage in a commercial sex act, with~~  
30 ~~the intent to effect or maintain a violation of Section 266, 266h,~~  
31 ~~266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518~~  
32 ~~is guilty of human trafficking. A violation of this subdivision is~~  
33 ~~punishable by imprisonment in the state prison as follows:~~

34 ~~(1) Five, 8, or 12 years and a fine of not more than five hundred~~  
35 ~~thousand dollars (\$500,000).~~

36 ~~(2) Fifteen years to life and a fine of not more than five hundred~~  
37 ~~thousand dollars (\$500,000) when the offense involves force, fear,~~  
38 ~~fraud, deceit, coercion, violence, duress, menace, or threat of~~  
39 ~~unlawful injury to the victim or to another person.~~

1     ~~(d) In determining whether a minor was caused, induced, or~~  
2 ~~persuaded to engage in a commercial sex act, the totality of the~~  
3 ~~circumstances, including the age of the victim, his or her~~  
4 ~~relationship to the trafficker or agents of the trafficker, and any~~  
5 ~~handicap or disability of the victim, shall be considered.~~

6     ~~(e) Consent by a victim of human trafficking who is a minor at~~  
7 ~~the time of the commission of the offense is not a defense to a~~  
8 ~~criminal prosecution under this section.~~

9     ~~(f) Mistake of fact as to the age of a victim of human trafficking~~  
10 ~~who is a minor at the time of the commission of the offense is not~~  
11 ~~a defense to a criminal prosecution under this section.~~

12     ~~(g) The Legislature finds that the definition of human trafficking~~  
13 ~~in this section is equivalent to the federal definition of a severe~~  
14 ~~form of trafficking found in Section 7102(9) of Title 22 of the~~  
15 ~~United States Code.~~

16     ~~(h) For purposes of this chapter, the following definitions apply:~~

17     ~~(1) “Coercion” includes a scheme, plan, or pattern intended to~~  
18 ~~cause a person to believe that failure to perform an act would result~~  
19 ~~in serious harm to or physical restraint against any person; the~~  
20 ~~abuse or threatened abuse of the legal process; debt bondage; or~~  
21 ~~providing and facilitating the possession of a controlled substance~~  
22 ~~to a person with the intent to impair the person’s judgment.~~

23     ~~(2) “Commercial sex act” means sexual conduct on account of~~  
24 ~~which anything of value is given or received by a person.~~

25     ~~(3) “Deprivation or violation of the personal liberty of another”~~  
26 ~~includes substantial and sustained restriction of another’s liberty~~  
27 ~~accomplished through force, fear, fraud, deceit, coercion, violence,~~  
28 ~~duress, menace, or threat of unlawful injury to the victim or to~~  
29 ~~another person, under circumstances where the person receiving~~  
30 ~~or apprehending the threat reasonably believes that it is likely that~~  
31 ~~the person making the threat would carry it out.~~

32     ~~(4) “Duress” includes a direct or implied threat of force,~~  
33 ~~violence, danger, hardship, or retribution sufficient to cause a~~  
34 ~~reasonable person to acquiesce in or perform an act which he or~~  
35 ~~she would otherwise not have submitted to or performed; a direct~~  
36 ~~or implied threat to destroy, conceal, remove, confiscate, or possess~~  
37 ~~an actual or purported passport or immigration document of the~~  
38 ~~victim; or knowingly destroying, concealing, removing,~~  
39 ~~confiscating, or possessing an actual or purported passport or~~  
40 ~~immigration document of the victim.~~

1     (5) ~~“Forced labor or services” means labor or services that are~~  
2 ~~performed or provided by a person and are obtained or maintained~~  
3 ~~through force, fraud, duress, or coercion, or equivalent conduct~~  
4 ~~that would reasonably overbear the will of the person.~~

5     (6) ~~“Great bodily injury” means a significant or substantial~~  
6 ~~physical injury.~~

7     (7) ~~“Minor” means a person less than 18 years of age.~~

8     (8) ~~“Serious harm” includes any harm, whether physical or~~  
9 ~~nonphysical, including psychological, financial, or reputational~~  
10 ~~harm, that is sufficiently serious, under all the surrounding~~  
11 ~~circumstances, to compel a reasonable person of the same~~  
12 ~~background and in the same circumstances to perform or to~~  
13 ~~continue performing labor, services, or commercial sexual acts in~~  
14 ~~order to avoid incurring that harm.~~

15     (i) ~~The total circumstances, including the age of the victim, the~~  
16 ~~relationship between the victim and the trafficker or agents of the~~  
17 ~~trafficker, and any handicap or disability of the victim, shall be~~  
18 ~~factors to consider in determining the presence of “deprivation or~~  
19 ~~violation of the personal liberty of another,” “duress,” and~~  
20 ~~“coercion” as described in this section.~~